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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR M MONTEZ,	)	
	)	
Petitioner,	)	No C 08-0815 VRW (PR)
	)	
vs.	)	ORDER TO SHOW CAUSE
	)	
BEN CURRY, Warden,	)	
	)	
Respondent.	)	
_____	)	

Petitioner, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, has filed a pro se petition for a writ of habeas corpus under 28 USC § 2254 challenging the California Board of Parole Hearings' ("BPH") May 31, 2006 decision to deny him parole.

**BACKGROUND**

On May 21, 1982, petitioner was sentenced to an indeterminate term of 15 years to life following a conviction for second degree murder in Los Angeles County superior court.

Petitioner has been found not suitable for parole each time he has appeared before the BPH. On January 3, 2008, the Supreme Court of California denied review of his challenge to the BPH's May 31, 2006 decision.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 USC § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id § 2243.

### B. Legal Claims

Petitioner seeks federal habeas corpus relief from the BPH's May 31, 2006 decision to deny him parole, and a subsequent hearing for one year, on the ground that it does not comport with due process. Among other things, petitioner claims that the decision is not supported by some evidence in the record. Liberally construed, petitioner's claim appears colorable under § 2254 and merits an answer from respondent. See Sass v Cal Bd of Prison Terms, 461 F3d 1123, 1127-29 (9th Cir 2006) (finding that refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections).

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

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1           2.       Respondent shall file with the court and serve on petitioner, within  
2       60 days of the issuance of this order, an answer conforming in all respects to Rule  
3       5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
4       habeas corpus should not be issued. Respondent shall file with the answer and  
5       serve on petitioner a copy of all portions of the state trial record that have been  
6       transcribed previously and that are relevant to a determination of the issues  
7       presented by the petition.

8           If petitioner wishes to respond to the answer, he shall do so by filing a  
9       traverse with the court and serving it on respondent within 30 days of his receipt  
10      of the answer.

11          3.       Respondent may file a motion to dismiss on procedural grounds in  
12      lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the  
13      Rules Governing Section 2254 Cases. If respondent files such a motion,  
14      petitioner shall file with the court and serve on respondent an opposition or  
15      statement of non-opposition within 30 days of receipt of the motion, and  
16      respondent shall file with the court and serve on petitioner a reply within 15 days  
17      of receipt of any opposition.

18          4.       Petitioner is reminded that all communications with the court must  
19      be served on respondent by mailing a true copy of the document to respondent's  
20      counsel. Petitioner must also keep the court and all parties informed of any  
21      change of address.

22                 SO ORDERED.

23                                 

24                                 \_\_\_\_\_  
25                                 VAUGHN R WALKER  
26                                 United States District Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

Montez,

Petitioner,

v.

Curry, et al,

Respondent.

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Case Number: C08-0815 VRW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Victor M. Montez C-48215  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960

Dated: June 24, 2008

Richard W. Wieking, Clerk  
By: Cora Klein, Deputy Clerk

*Cora Klein*